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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERSON JOSE LUCIANO-RAMOS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-72200

Agency No. A98-177-191

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Gerson Jose Luciano-Ramos, a native and citizen of Brazil, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

an immigration judge's decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. Reviewing for substantial evidence, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992), we deny in part and dismiss in part the petition for review.

The record does not compel the conclusion that Luciano-Ramos' untimely filing of his asylum application should be excused due to changed or extraordinary circumstances. *See* 8 U.S.C. § 1158(a)(2)(D); 8 C.F.R. § 208.4(a)(4), (5).

Substantial evidence supports the agency's denial of withholding of removal because Luciano-Ramos failed to establish that it is more likely than not that he will be persecuted on account of a protected ground if he returns to Brazil. *See Elias-Zacarias*, 502 U.S. at 481-82; *see also* 8 C.F.R. § 1208.16(b) (explaining that applicant for withholding of removal bears burden of showing persecution was or will be on account of a protected ground).

Substantial evidence further supports the denial of CAT relief because Luciano-Ramos did not show it is more likely than not that he will be tortured by or with the acquiescence of the government. *Cf. Zheng v. Ashcroft*, 332 F.3d 1186, 1194-95 (9th Cir. 2003).

We lack jurisdiction to review Luciano-Ramos' contentions that he qualifies for humanitarian asylum, that his procedural due process rights were violated, and that he suffers from seizures, because he failed to exhaust these claims before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.